

The new fraud test and manifest injustice

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Two of the most significant changes in the 2017 Act are the introduction of a statutory definition of land transfer fraud, together with a provision allowing registration to be overturned on grounds other than fraud – where the registration result is considered to be “manifestly unjust.”

The statutory definition of fraud is cumbersome, unsatisfactory and awkwardly drafted. This poses some interpretative challenges, and may indicate the inadvisability of attempting a comprehensive statutory definition of this construct.

The manifest injustice test is equally problematic. It allows the Torrens registered result to be overturned on the general grounds that the registered result is manifestly unjust. This determination cannot be made without a court hearing, with relevant factual findings being made by the court that relate to the effect of the transaction under consideration on affected parties, including holders of unregistered interests.

By application of the manifest injustice test, the land can be returned notwithstanding the absence of any finding of fault, fraud or improper dealing by the new title registrant. Indeed, the relevant grounds suggests a statutory bias in favour of returning land. Furthermore, the hapless new registrant will have to bear their own litigation costs in defending their registered status, even though they are not a wrongdoer. This is because that party is only entitled to compensation from the State if the title registration is overturned. This raises the issue of whether we still have an immediate indefeasibility system, or indeed even a State guarantee of the registered result.